

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

JOEL CURRY, a minor, by and through	)	Civil Action No. 04-CV-10143-BC
his parents PAUL and MELANIE	)	Judge David M. Lawson
CURRY,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
	)	
SCHOOL DISTRICT OF THE CITY OF	)	
SAGINAW, and IRENE HENSINGER,	)	
Principal, Handley School, in her official	)	
and individual capacities,	)	
	)	
Defendants.	)	
_____	)	

**MOTION OF THE UNITED STATES FOR LEAVE TO FILE**  
**BRIEF AS AMICUS CURIAE IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

The United States hereby moves for leave to file a brief as amicus curiae in support of the Plaintiffs' Motion for Summary Judgment for the reasons set forth in the accompanying brief.

**BRIEF**

In support of the government's motion, the United States respectfully submits the following:

1. In December 2003, Plaintiff Joel Curry ("Joel") and his classmates were asked to develop and market a product to "sell" to other students in exchange for fake money. See Stipulated Facts paras. 3-6. Joel and his classmates were permitted to choose the item that they

wished to construct, market, and sell, either alone or with a partner. See id. Joel chose to make a candy-cane ornament out of pipe cleaners and beads, and attached a message about the religious origins of the candy cane. See id. para. 8. School officials concede that they forbade Joel from selling his candy canes because of the religious content of the attached message. See id. paras. 20, 31.

2. On June 16, 2004, the Plaintiffs filed a Verified Complaint, alleging that the Defendants violated Joel's rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment and the Establishment, Free Exercise, and Free Speech Clauses of the First Amendment. See Verified Compl. at 9-14.

3. The United States is charged by Congress with enforcing the civil rights of public school students under Title IV of the Civil Rights Act of 1964, which authorizes the Attorney General to seek relief if a school deprives students of the equal protections of the laws. See 42 U.S.C. § 2000c-6 (2005). The United States also is authorized under Title IX of the Civil Rights Act of 1964 to intervene in cases alleging violations of the Equal Protection Clause that are of general public importance. See 42 U.S.C. § 2000h-2. This case, which alleges discrimination against a public school student on the basis of his religious expression in violation of the First Amendment and the Equal Protection Clause, raises issues within the ambit of the United States' enforcement authority.

4. The United States has used the authority granted by Congress under Title IX to intervene in cases involving discrimination against the religious expression of students. See Hearn v. Muskogee Pub. Sch. Dist. 020, C.A. No. CIV 03-598-S (E.D. Okla. 2004) (intervention

on behalf of a Muslim student who was barred from wearing a headscarf to school). In some religious expression cases, where the United States has determined that its interests under Title IX and the interest of judicial economy would best be served by amicus participation rather than intervention, the United States has sought and has been granted leave to participate as amicus curiae in District Court. See, e.g., Child Evangelism Fellowship v. Lenz, No. ED-CV-04-839-VAP-(SGLx) (C.D. Cal. Nov. 24, 2004) (case involving religious youth organization’s access to school facilities); Westfield High School L.I.F.E. Club v. City of Westfield, 249 F. Supp.2d 98, 101 (D. Mass. 2003) (case involving student distribution of candy canes with religious messages attached). The United States believes that its Title IX interests, and the broader interest in the just, speedy, and inexpensive resolution of disputes in federal court, would be furthered by its participation in this case as amicus rather than as intervenor.

5. The facts of this case also implicate the United States’ Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools (the “Guidance”), 68 Fed. Reg. 9645 (Feb. 28, 2003), promulgated pursuant to 20 U.S.C. § 7904. The Guidance reflects “the current state of the law concerning constitutionally protected prayer in the public schools.” 68 Fed. Reg. at 9646. Schools are required to certify that they are in compliance with the Guidance as a condition of receiving federal funds. See id. at 9645. Under “Religious Expression and Prayer in Class Assignments,” the Guidance states, in relevant part, “Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions.” Id. at 9647. The United States has an interest in how particular factual applications of the

principles set forth in the Guidance are resolved.

6. Federal district courts have the inherent authority to permit a non-party to participate as an amicus curiae in a case, see United States v. State of Michigan, 116 F.R.D. 655, 660 (W.D. Mich. 1987), and have broad discretion in deciding whether to permit such participation. See Dunbar v. Landis Plastics, Inc., 996 F. Supp. 174, 179 (N.D.N.Y. 1998); Ellsworth Assocs., Inc. v. United States, 917 F. Supp. 841, 846 (D.D.C. 1996). Generally, courts will permit amicus participation if the information offered is “timely and useful.” Id. at 846 (citation and internal quotations omitted). The United States’ proposed amicus participation satisfies both of these elements.

7. First, the United States’ amicus motion is timely. The Plaintiffs’ Motion for Summary Judgment was filed on January 28, 2005. The United States’ amicus motion will be filed only three days after the Plaintiffs’ Motion. Should the Court grant the United States’ Motion, the United States will file its Brief in Support of the Plaintiffs’ Motion for Summary Judgment within the period of time specified by this Court. The Defendants have not yet responded to the Plaintiffs’ Motion. The Court has not yet heard oral argument on the matter and has not issued a ruling on the Motion.

8. Second, the United States believes that its Brief in Support of the Plaintiffs’ Motion for Summary Judgment will be helpful to the Court in considering the Plaintiffs’ Motion for Summary Judgment, in light of the United States’ experience and interest in litigating cases involving religion-based discrimination. See In re Roxford Foods Litig., 790 F. Supp. 987, 997 (E.D. Cal. 1991) (permitting the U.S. Department of Agriculture (“USDA”) to participate as

amicus in a case involving statutory interpretation of the Poultry Producers Financial Protection Act in light of the USDA's general oversight authority over the Act).

9. Pursuant to Eastern District of Michigan Local Civil Rule 7.1, the United States has contacted the Plaintiffs and Defendants in an attempt to gain their stipulation to the United States' participation as amicus curiae. Plaintiffs consented to such participation, and the Defendants did not. The United States has notified the parties of its intention to file this Motion.

Wherefore, the United States requests that the Court grant the Motion of the United States for Leave to File Brief as Amicus Curiae in Support of Plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

**Attorneys for the United States**

CRAIG S. MORFORD  
United States Attorney

R. ALEXANDER ACOSTA  
Assistant Attorney General

By: s/Michael Hluchaniuk \_\_\_\_\_  
MICHAEL HLUCHANIUK (P15007)  
101 First Street  
Suite 200  
Bay City, MI 48708  
(989) 895-5712  
Fax (989) 895-5790  
[michael.hluchaniuk@usdoj.gov](mailto:michael.hluchaniuk@usdoj.gov)

ERIC W. TREENE  
JAVIER M. GUZMAN  
WILLIAM RHEE  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Educational Opportunities Section  
Patrick Henry Building, Suite 4300  
Washington, DC 20530  
(202) 514-4092  
Fax (202) 514-8337  
[javier.guzman@usdoj.gov](mailto:javier.guzman@usdoj.gov)  
[william.rhee@usdoj.gov](mailto:william.rhee@usdoj.gov)

This 31st day of January 2005.

**SIGNATURE AND SERVICE CERTIFICATION**

I, Michael Hluchaniuk, undersigned attorney for the United States, certify that, pursuant to E.D. Mich. L.R. ECF R9, on January 31, 2005, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to Joshua A. Carden, counsel for the Plaintiffs, and Philip A. Erickson, counsel for the Defendants.

By: s/Michael Hluchaniuk  
MICHAEL HLUCHANIUK  
101 First Street  
Suite 200  
Bay City, MI 48708  
(989) 895-5712  
Fax (989) 895-5790  
[michael.hluchaniuk@usdoj.gov](mailto:michael.hluchaniuk@usdoj.gov)